

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 131  
LEVELING THE PLAYING FIELD FOR ILLINOIS RETAIL ACT

Section

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131 ILLUSTRATION A Leveling the Playing Field Retailer Flowchart

AUTHORITY: Implementing Article 5 of the Leveling the Playing Field for Illinois Retail Act [35 ILCS 185] and authorized by Section 12 of the Retailers' Occupation Tax Act [35 ILCS 120] and Section 2505-795 of the Department of Revenue Law [20 ILCS 2505].

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for the remainder of the 150 days; emergency rule as amended expired December 9, 2021;  
amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 131.105 Definitions

As used in this Part:

"Affiliate" means a person that, with respect to another person:

has a direct or indirect ownership interest of more than 5% in the other person; or

is related to the other person because a third person, or a group of third persons who are affiliated with each other (under this definition), holds a direct or indirect ownership interest of more than 5% in the related person.

*"Certified Service Provider" or "CSP" means an agent certified by the Department to perform the remote retailer's use and occupation tax functions, as outlined in the contract between the State and the certified service provider. [35 ILCS 185/5-10]*

*"Certified Automated System" or "CAS" means an automated software system that is certified by the State as meeting all performance and tax calculation standards required by this Part. References throughout this Part to a CAS mean the person that owns or provides the certified automated software system used by a remote retailer. [35 ILCS 185/5-10]*

*"Department" means the Department of Revenue. [35 ILCS 185/5-10]*

*"Marketplace" means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. [35 ILCS 120/1]*

*"Marketplace Facilitator" means a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates, facilitates a retail sale by an unrelated third-party marketplace seller by:*

*listing or advertising for sale, by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the Retailers' Occupation Tax Act [35 ILCS 120]; and*

*either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.*

*A person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not engage, directly or indirectly through one or more affiliated persons, in the activities described in the second indented paragraph of this definition. [35 ILCS 120/1]*

Effective August 27, 2021, "marketplace facilitator" does not include any person licensed under the Auction License Act, [225 ILCS 407]. This exemption does not apply to any person who is an Internet Auction listing service, as defined in Section 5-10 of the Auction License Act. [35 ILCS 120/1]

*"Marketplace Seller" means a person that makes sales through a marketplace operated by an unrelated third-party marketplace facilitator and who has obtained a certification from the marketplace facilitator as provided in Section 131.145. A person that is an affiliate, as defined in this Section, of a marketplace facilitator is not a marketplace seller. [35 ILCS 120/1]*

"Out-of-State Seller" means:

A seller located outside Illinois but that has or maintains within Illinois, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the seller or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such seller or subsidiary is licensed to do business in this State. However, the ownership of property that is located at the premises of a printer with which the seller has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced shall not result in the seller being deemed to have or maintain an office, distribution house, sales house, warehouse, or other place of business within this State; or

A seller located outside Illinois but that has a contract with a person located in this State under which the person, for a commission or other

128 consideration based upon the sale of tangible personal property by the  
129 seller, directly or indirectly refers potential customers to the seller by  
130 providing to the potential customers a promotional code or other  
131 mechanism that allows the seller to track purchases referred by such  
132 persons. Examples of mechanisms that allow the seller to track purchases  
133 referred by such persons include but are not limited to the use of a link on  
134 the person's Internet website, promotional codes distributed through the  
135 person's hand-delivered or mailed material, and promotional codes  
136 distributed by the person through radio or other broadcast media. These  
137 provisions shall apply only if the cumulative gross receipts from sales of  
138 tangible personal property by the seller to customers who are referred to  
139 the seller by all persons in this State under such contracts exceed \$10,000  
140 during the preceding 4 quarterly periods ending on the last day of March,  
141 June, September, and December. A seller meeting the requirements of this  
142 paragraph shall be presumed to be an Out-of-State Seller but may rebut  
143 this presumption by submitting proof that the referrals or other activities  
144 pursued within this State by such persons were not sufficient to meet the  
145 nexus standards of the United States Constitution during the preceding 4  
146 quarterly periods; or

147  
148 A seller located outside Illinois but that has a contract with a person  
149 located in this State under which

150  
151 the seller sells the same or substantially similar line of products as  
152 the person located in this State and does so using an identical or  
153 substantially similar name, trade name, or trademark as the  
154 person located in this State; and

155  
156 the seller provides a commission or other consideration to the  
157 person located in this State based upon the sale of tangible  
158 personal property by the seller.

159  
160 The provisions contained in the preceding two indented paragraphs  
161 shall apply only if the cumulative gross receipts from sales of tangible  
162 personal property by the seller to customers in this State under all  
163 such contracts exceed \$10,000 during the preceding 4 quarterly  
164 periods ending on the last day of March, June, September, and  
165 December. [35 ILCS 105/2]

166  
167 An out-of-state seller incurs a Use Tax (6.25%) collection obligation for  
168 sales made to Illinois purchasers when both its selling activities occur  
169 outside Illinois and the inventory used to fill purchases for Illinois  
170 purchasers is located outside Illinois (see 86 Ill. Adm. Code 270.115(c))

and (d) for factors used to make this determination). If either its selling activities occur in Illinois or its inventory is located in Illinois for a sale made to an Illinois purchaser, the out-of-state seller is considered an Illinois retailer for that transaction (like an Illinois brick and mortar retailer) and is subject to State and local retailers' occupation taxes at the origin rate at the location at which the selling activities occur or the location at which the inventory is located (see 86 Ill. Adm. Code 270.115(c) and (d) for factors used to make this determination).

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court. [35 ILCS 120/1]

"Remote Retailer" means a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its own inventory in Illinois is not a "remote retailer". [35 ILCS 120/1]. For purposes of this Part, beginning on January 1, 2021, a remote retailer's inventory at the location of a marketplace facilitator in Illinois does not create physical presence nexus when used exclusively to fulfill orders made over the marketplace that meets a tax remittance threshold under Section 131.135(a) because the marketplace facilitator is considered the retailer with respect to sales over the marketplace.

"Retailers' Occupation Tax" means the tax levied under the Retailers' Occupation Tax Act (ROTA) and all applicable local retailers' occupation taxes collected by the Department in conjunction with the State retailers' occupation tax.

"Unrelated Third Party" means a person that, with respect to another person, has a direct or indirect ownership of 5% or less in the other person. A person is also considered to be an unrelated third party when a third person, or group of third persons who are affiliated with each other as defined in this Section, hold a direct or indirect ownership interest of 5% or less in the other person.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 131.107 Description of Different Types of Retailers On and After January 1, 2021 – Scope of Regulations

- a) Different Types of Retailers On and After January 1, 2021. Public Acts 101-0031 and 101-0604 added several new types of retailers with different tax liabilities to the State's existing sales tax structure. As a result, retailers now include the following:
- 1) Remote retailers incurring State and local retailers' occupation tax using destination sourcing for sales made to Illinois purchasers; a marketplace seller that makes sales over a marketplace that meets either of the required tax remittance thresholds in Section 131.115 of this Part and that also makes sales outside of that marketplace may also be considered a remote retailer for sales outside of the marketplace;
  - 2) Marketplace facilitators incurring State and local retailers' occupation tax using destination sourcing for sales made over the marketplace on behalf of marketplace sellers to Illinois purchasers;
  - 3) Marketplace facilitators incurring State and local retailers' occupation tax using origin sourcing for their own sales that are either fulfilled from inventory located in Illinois or for which selling activities otherwise occur in Illinois (the location at which the State and local retailers' occupation tax is incurred must be determined by applying the provisions of 86 Ill. Adm. Code 270.115 (c) and (d)); and incurring State and local retailers' occupation tax using destination sourcing for all other sales of its own;
  - 4) Out-of-State ~~sellers~~retailers with a physical presence in Illinois incurring a Use Tax collection obligation for sales ~~they make~~made outside Illinois and ~~ship~~shipped or ~~deliver~~delivered to Illinois purchasers; such ~~sellers~~retailers ~~however, also~~ incur State and local retailers' occupation taxes using origin sourcing for sales for which their selling activities occur in Illinois (see, e.g., 86 Ill. Adm. Code 270.115 (c) and (d)); if such sellers also make sales over a marketplace, they are considered marketplace sellers and the marketplace facilitator will incur State and local retailers' occupation tax liability based on destination sourcing for these sales~~for any sales made in Illinois;~~
  - 5) Illinois retailers, including brick and mortar retailers, incurring no State or local retailers' occupation taxes for sales made over a marketplace (the marketplace facilitator will now incur State and local retailers' occupation tax liability based on destination sourcing for these sales); and
  - 6) Illinois retailers, including brick and mortar retailers, incurring State and local retailers' occupation taxes based on origin sourcing for sales made in Illinois.

7) Illinois retailers, including brick and mortar retailers, incurring a Use Tax collection obligation for sales fulfilled from out-of-state inventory and for which selling activities occur out of state.

b) As a result of these differing tax obligations, it is critical that retailers examine their selling activities to determine their specific tax liabilities. This is especially important for retailers that engage in multichannel retailing (for example, retailers that engage in selling through their own website, as well as through a marketplace, or Illinois brick and mortar retailers that also sell over a marketplace).

c) Scope of Regulations. The rules established in this Part for remote retailers, marketplace facilitators, and marketplace sellers apply only to the remittance of State Retailers' Occupation Tax and local retailers' occupation taxes administered by the Department. Remote retailers, marketplace facilitators or marketplace sellers that incur other taxes or fees administered by the Department, or other taxes not administered by the Department, remain liable for the remittance of those taxes to the Department or other taxing authority.

1) Taxes required to be remitted under this Part include the State and local retailers' occupation taxes commonly referred to as "sales taxes." These taxes include, but are not limited to:

A) the State Retailers' Occupation Tax and, except as otherwise provided in this subsection, all other local retailers' occupation taxes administered by the Department, including but not limited to, the Home Rule Municipal Retailers' Occupation Tax and the Regional Transportation Authority Retailers' Occupation Tax; and

B) beginning October 1, 2021, the Home Rule Municipal Soft Drink Retailers' Occupation Tax imposed at 65 ILCS 8-11-6b(b) ("Chicago Soft Drink ROT"). Remote retailers that meet a tax remittance threshold (see Section 131.115(a)) are deemed to be engaged in the business of selling soft drinks at the Illinois location to which the soft drinks are shipped or delivered or at which possession is taken by the purchaser. If that location is in Chicago, the remote retailer incurs and must register and remit the Chicago Soft Drink ROT. Similarly, the Chicago Soft Drink ROT is required to be remitted by marketplace facilitators making sales on behalf of marketplace sellers if the soft drinks are shipped or delivered to an address in Chicago, or if possession of the soft drinks is taken by the purchaser in Chicago. Marketplace



facilitators making their own sales of soft drinks incur the Chicago Soft Drink ROT if the soft drinks are shipped or delivered to a location in Chicago or if possession is taken by the purchaser in Chicago, or if the selling activities of the marketplace facilitator occur in Chicago (see, e.g., 86 Ill. Adm. Code 270.115(c) and (d)); and

C) beginning October 1, 2021, the tax imposed at 70 ILCS 210/13 upon persons engaged in the business of selling food, alcoholic beverages and soft drinks within the boundaries of the Metropolitan Pier and Exposition Authority (MPEA ROT). Food delivery services that are considered marketplace facilitators are required to remit the MPEA ROT on sales made on behalf of a restaurant or other food establishment that is subject to the MPEA ROT.

i) Food delivery services that are considered marketplace facilitators meeting a tax remittance threshold in Section 131.135 of this Part are required to remit the 1% MPEA ROT only if the sale to a purchaser is made by a restaurant located within the MPEA district. The State ROT and local sales taxes (such as the Home Rule Municipal ROT or the Home Rule County or Regional Transportation Authority ROT) are required to be remitted, however, at the rate in effect at the location to which the food or beverages are shipped or delivered or at which possession is taken by the purchaser (destination rate).

ii) Food delivery services considered marketplace facilitators must provide a certification to each food service establishment that sells over its marketplace that it assumes the rights and duties of a retailer under the ROTA and all applicable local retailers' occupation taxes administered by the Department (including the MPEA ROT and the Chicago Soft Drink Tax, if applicable) with respect to sales made by the food establishment through the marketplace; and that it will remit taxes imposed by the retailers' occupation tax and all applicable local retailers' occupation taxes administered by the Department (including the MPEA ROT and the Chicago Soft Drink Tax) for sales made through the marketplace. This certification must also contain the name, address, and Illinois Account ID number for the sales tax account of the marketplace facilitator and



the name, address and Illinois Account ID number for the sales tax account of the food service establishment. Food service establishments that have obtained this certification shall be relieved of liability for tax on sales made over the marketplace unless the marketplace facilitator seeks relief from liability as a result of good faith reliance on incorrect information provided to it by the marketplace seller [35 ILCS 120/2] (see Section 131.150(b)-(c) of this Part), or until the food service establishment has been notified by a marketplace facilitator that the marketplace facilitator is no longer required to remit tax as provided in Section 131.135(f) of this Part.

24) Taxes or fees~~Examples of other taxes~~ administered by the Department that are not subject to the provisions of this Part. Remote retailers, marketplace sellers and marketplace facilitators often sell tangible personal property that is subject to additional taxes, other than State and local retailers' occupation taxes which are required to be remitted under Section 2 of the Retailers' Occupation Tax Act. They must determine whether they incur these additional taxes by examining the specific provisions of these additional tax acts. These additional taxes may commonly include, but are not limited to:~~include, but are not limited to, the Prepaid Wireless 9-1-1 Surcharge imposed at 50 ILCS 753/15 and the tax imposed at 70 ILCS 210/13 upon persons engaged in the business of selling food, alcoholic beverages and soft drinks within the boundaries of the Metropolitan Pier and Exposition Authority.~~

A) the Prepaid Wireless 9-1-1 Surcharge (E911 Surcharge) imposed at 50 ILCS 753/15 and

B) the Illinois Telecommunications Access Corporation Assessment (ITAC Assessment) imposed at 220 ILCS 5/13-703.

32) Taxes~~Examples of other taxes~~ not administered by the Department include, but are not limited to, taxes imposed and administered by a home rule municipality on food prepared for immediate consumption and on alcoholic beverages under the authority of 65 ILCS 5/8-11-6a.

43) Remote retailers, marketplace sellers and marketplace facilitators that remain liable for ~~the other~~ Department-administered taxes not subject to this Part as described in this subsection (c)(2) must register with the Department to remit those taxes. Remote retailers, marketplace sellers and marketplace facilitators must review the statutes imposing these taxes to

determine whether they are required to register and remit them. In the case of marketplace sellers incurring these additional taxes for tangible personal property sold over a marketplace, the Department strongly encourages them to work with their marketplace facilitators to make arrangements allowing the marketplace facilitator to collect these taxes and remit them to the marketplace seller, along with the gross receipts from the sale, so that the marketplace seller can then remit the taxes to the Department as required.

5)4) Remote retailers, marketplace sellers, and marketplace facilitators that remain liable for ~~the other~~ taxes not administered by the Department are strongly encouraged to contact the appropriate local taxing authority with questions related to registration and remittance of tax.

EXAMPLE 1: T-Cell, Inc. sells prepaid mobile phones over a marketplace that is required to remit tax to the Department under this Part. A Chicago resident purchases a prepaid mobile phone which is delivered to her Chicago address. Her purchase is subject to both the Prepaid Wireless 911 Surcharge and the ITAC Assessment. These taxes are incurred because the laws imposing these surcharges/assessments provide that the surcharges/assessments are incurred whenever the sale of the tangible personal property is treated as occurring in Illinois for purposes of the Retailers' Occupation Tax Act (under the provisions of Section 2 of the Retailers' Occupation Tax Act this is the case). Although the marketplace facilitator is required to collect and remit State and local retailers' occupation taxes on this sale, it is not required to collect and remit the E911 Surcharge or the ITAC Assessment. T-Cell, Inc. must register with the Department to collect and remit the E911 Surcharge and ITAC Assessment.

EXAMPLE 2: Greet N Eat is a food delivery service that is considered a marketplace facilitator required to remit tax under this Part. A customer in Oak Park orders a pizza and a liter bottle of a soft drink over Greet N Eat's application from a pizzeria in Chicago that is subject to the MPEA ROT. Greet N Eat incurs the State ROT (6.25%), the Home Rule Municipal ROT in Oak Park, the County Home Rule ROT for Cook County, and the RTA ROT for Cook County on this transaction. It also incurs the 1% MPEA ROT, since the pizzeria is subject to the MPEA ROT. It does not, however, incur the Chicago Soft Drink Tax, because the soft drink is not delivered to a purchaser within the City of Chicago.

EXAMPLE 3: Greet N Eat is a food delivery service that is considered a marketplace facilitator required to remit tax under this Part. A customer in

the MPEA ROT district orders a pizza and a liter bottle of a soft drink over Greet N Eat's application from a pizzeria in Oak Park that is not subject to the MPEA ROT. Greet N Eat incurs the State ROT (6.25%), the Home Rule Municipal ROT in Chicago, the County Home Rule ROT for Cook County, and the RTA ROT for Cook County on this transaction. It incurs the Chicago Soft Drink Tax, because the soft drink is delivered to a purchaser within the City of Chicago. It does not, however, incur the 1% MPEA ROT since the pizzeria is not subject to the MPEA ROT.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 131.110 Remote Retailers – General Provisions**

a) On and after January 1, 2021, a remote retailer that meets either of the thresholds in Section 131.115(a) is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of ROTA and is liable for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers.

b) Remote retailers are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers' occupation taxes are incurred at the rate in effect at this location. (See Section 131.155.)

c) Provisions of this Part – when not applicable. The provisions of this part do not apply to remote retailers who exclusively make nontaxable sales (i.e., 100% of their sales to Illinois purchasers are exempt). If a remote retailer makes any taxable sales, however, the provisions of this Part apply and it must determine whether it meets either of the tax remittance thresholds in Section 131.115. The rules provided in Section 131.120 must be applied when making this determination.~~Sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made by remote retailers to Illinois purchasers are not subject to the provisions of this Part. State and local use taxes shall continue to be paid by purchasers as required by law as a condition of titling or registering these items.~~

EXAMPLE: If Remote Retailer A's only activities are sales of exempt manufacturing machinery and equipment to Illinois manufacturers, the provisions of this Part do not apply and it is not required to register with the Department and file returns. If Remote Retailer A makes any taxable sales, however, the provisions of this Part apply and it must determine whether it meets either of the tax remittance thresholds in Section 131.115. The rules provided in Section

131.120 must be applied when making this determination. For example, for purposes of determining if it has met either of the tax remittance thresholds, it must include its exempt sales as provided in Section 131.120(b)(5).

d) Remote retailers are often multichannel retailers. That is, they may also sell their products through a marketplace and so are considered marketplace sellers. Marketplace facilitators required to register with the Department, as provided in Section 131.135, incur State and local retailers' occupation taxes on sales made to Illinois purchasers on behalf of remote retailers making sales over the marketplace. Remote retailers do not incur tax on these sales. (See Section 131.150.)

e) Beginning January 1, 2022, sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made by remote retailers to purchasers in Illinois are subject to the provisions of this Part. This Part does not apply when a retailer ships or delivers titled or registered items to purchasers in Illinois using its own delivery vehicle. In addition, for a transaction in which an Illinois purchaser travels to an out-of-state location to take possession of an item that is required to be titled or registered with an agency of the State of Illinois, the provisions of this Part do not apply. In these cases, only Use Tax is incurred.

f) Examples. ~~All facts set forth in EXAMPLE 2 through EXAMPLE 4 apply to each following example.~~

EXAMPLE 1: On December 31, 2020, ABC Wines, an Illinois Liquor Control Commission Winery Shipper's License holder located in New York that has no physical presence in Illinois, determines that it has made sales to Illinois purchasers for the preceding 12 months that exceed \$100,000. Beginning January 1, 2021, ABC Wines must collect and remit ~~all applicable~~ State and ~~locally imposed~~ retailers' occupation tax in effect at the Illinois address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing") for sales to Illinois purchasers for one year.

EXAMPLE 2: Ponchos for Pooches.com is a retailer of rain gear for dogs. Its sales are made exclusively from its manufacturing facility in Portland, Oregon. It has no physical presence in Illinois. Its annual gross receipts from sales to Illinois purchasers exceed \$100,000. Ponchos for Pooches.com is a remote retailer and is required to register with the Department and remit State and local retailers' occupation taxes in effect at the address to which its products are shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

EXAMPLE 3: Rain gear sold to Illinois purchasers by Ponchos for Pooches.com has skyrocketed. As a result, the company has begun sending sales representatives to Illinois to market its products through local pet stores. As a result of these activities, Ponchos for Pooches.com is no longer considered a remote retailer because it has a physical presence in Illinois due to the presence of its sales reps. At this point, its tax liability changes. It no longer incurs State and local retailers' occupation taxes on its sales. It instead incurs an obligation to collect and remit only the Use Tax~~use-tax~~ (6.25%) on its sales.

EXAMPLE 4: Ponchos for Pooches.com has become so popular with Illinois purchasers that the company decides to open up a manufacturing facility in Illinois. Sales to Illinois purchasers are sometimes fulfilled from this facility. For all sales to Illinois purchasers that are fulfilled from its Illinois manufacturing facility, Ponchos for Pooches.com incurs State and local retailers' occupation taxes in effect at the location of the manufacturing facility ("origin sourcing"). In addition, Ponchos for Pooches.com incurs only a Use Tax~~use-tax~~ collection obligation (6.25%) on sales made from its Oregon manufacturing facility. As illustrated in Example 3, Ponchos for Pooches.com is not considered a remote retailer because it has a physical presence in Illinois (its manufacturing facility).

EXAMPLE 5: Ponchos for Pooches.com decides to sell its products over a marketplace. The marketplace meets the tax remittance requirements of Section 131.135(a) and so is required to remit State and local retailers' occupation taxes to the Department on all sales made over its marketplace to Illinois purchasers by its marketplace sellers. Ponchos for Pooches.com is not responsible for reporting and remitting tax on sales made over the marketplace. As provided in Example 4, Ponchos for Pooches.com maintains a physical presence in Illinois due to its manufacturing facility. Ponchos for Pooches.com incurs State and local retailers' occupation taxes for all sales it makes to Illinois purchasers outside the marketplace that are fulfilled from its Illinois manufacturing facility ("origin sourcing"). In addition, Ponchos for Pooches.com incurs only a Use Tax~~use-tax~~ collection obligation (6.25%) on sales it makes outside the marketplace to Illinois purchasers that are fulfilled from its Oregon manufacturing facility.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 131.120 Factors Used by Remote Retailers in Determining if the Thresholds in Section 131.115 (a) of this Part are Met**

- a) "Gross Receipts" and "Separate Transactions" Defined. The following definitions must be applied by a remote retailer when determining if it meets either of the thresholds establishing tax remittance obligations:

1) "Gross Receipts" means *all the consideration actually received for a sale.*  
(See 86 Ill. Adm. Code 130.401 for additional information regarding gross  
receipts.) *Subsection (b) of this Section describes what kinds of*  
*transactions must be included or excluded when determining whether the*  
*threshold based on gross receipts is met.*

2) "Illinois Purchaser" means *a person in Illinois who, through a sale at*  
*retail, acquires the ownership of tangible personal property for a valuable*  
*consideration.*

3) "Entering into a Sale" occurs when a remote retailer has taken action that  
binds it to a sale. This may occur even though the tangible personal  
property that has been sold has not yet shipped to the purchaser.

EXAMPLE: On December 15, 2020, a remote retailer takes actions  
binding it to a sale that is scheduled for shipment on January 15, 2021.  
This sale must be included in the calculation used to determine the remote  
retailer's sales transactions for its initial lookback period under Section  
131.115(b) (i.e., the lookback period of January 1, 2020 through  
December 31, 2020).

4) "Separate Transactions" means sales transactions which are documented  
on separate invoices, regardless of the manner in which the tangible  
personal property is delivered to the purchaser.

EXAMPLE 1: A purchaser orders 12 items of clothing from a remote  
retailer. He receives an invoice confirming his order of 12 items.  
However, due to a back order, 3 of the clothing items are shipped  
separately from the other 9 items. Shipment of the 3 back-ordered items,  
even with a separate shipping invoice, is not considered a separate  
transaction because the original transaction was invoiced as one sale.

EXAMPLE 2: A purchaser places an order of home repair tools at 8:00  
a.m. from a remote retailer. She receives an invoice confirming her order  
at 8:15 a.m. At 2:00 p.m., the purchaser realizes she needs 5 other tools to  
complete the job, and orders these tools from the same remote retailer.  
The remote retailer confirms this order with a separate invoice. In this  
example, two different transactions have occurred. This is the case, even  
if the remote retailer sends all the ordered tools to the purchaser in one  
package.

EXAMPLE 3: A parent places an order with a remote retailer for care  
packages to be delivered to his or her son's dormitory at 8 scheduled

intervals during the school year. Each delivery is separately invoiced.  
These are counted as 8 separate transactions.

- b) Transactions that are included or excluded in determining if either of the thresholds establishing tax remittance obligations are met. A remote retailer must apply the following provisions in determining whether a transaction should be included or excluded for purposes of determining if it meets either of the thresholds establishing tax remittance obligations:

- 1) Sales for resale must be excluded. (See 86 Ill. Adm. Code 130.210.)

EXAMPLE: A remote retailer makes a sale of seedlings to Company B. Company B provides a resale certificate indicating that 60% of the seedlings will be sold to customers at retail (a purchase for resale) and that it will use 40% of the seedlings in its landscaping business (a purchase for use). When calculating its threshold using gross receipts, it should include only 40% of the gross receipts from this sale. When calculating its threshold using transactions, however, the remote retailer must include the entire transaction with Company B.

- 2) *Neither the gross receipts from nor the number of separate transactions for sales of tangible personal property to purchasers in Illinois that a remote retailer makes through a marketplace facilitator shall be included for the purposes of determining whether he or she has met either of the thresholds of Section 131.115(a) so long as the remote retailer has received certification from the marketplace facilitator as provided in Section 131.145, that the marketplace facilitator is legally responsible for payment of tax on such sales. [35 ILCS 120/2(b-5)]*

- 3) Before January 1, 2022, sales Sales of tangible personal property that is required to be titled or registered with an agency of this State, including motor vehicles, watercraft, aircraft, and trailers, that are made by remote retailers to Illinois purchasers must be excluded. Beginning January 1, 2022, sales of tangible personal property that is required to be titled or registered with an agency of this State, including motor vehicles, watercraft, aircraft and trailers, that are made by remote retailers to purchasers in Illinois must be included. ~~State and local use taxes shall continue to be paid by purchasers as required by law as a condition of titling or registering these items.~~

- 4) Occasional sales (see 86 Ill. Adm. Code 130.110) must be excluded. Occasional sales made by remote retailers are not considered sales at retail. For example, a retailer that engages in selling computers and



software over the Internet closes a regional office in Michigan. As part of that closure, it sells its office furniture and printing equipment on its website. Transactions from these sales are excluded from the calculation because they are not considered sales at retail.

- 5)4) All sales of tangible personal property, other than those excluded by this subsection (b), even if they are exempt from tax, must be included for purposes of calculating the thresholds.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 131.125 Remote Retailers – Obligations – Procedures – Hold Harmless Provisions**

- a) Remote retailers meeting either of the thresholds in Section 131.115(a) are required to register with the Department to file returns and remit tax for all sales made to Illinois purchasers. However, a remote retailer that has entered into a Tax Remittance Agreement with a CSP is not required to register with the Department. The CSP shall instead register, as agent, for the remote retailer and file returns and make payment of tax as provided in Section 131.160. A remote retailer that no longer has a Tax Remittance Agreement with a CSP as provided in Section 131.160(ji) is required to register and file returns to remit tax as otherwise provided in this Part.
- b) A remote retailer may, but is not required to, use a CSP to file returns and remit taxes, as provided in Section 131.160.
- c) A remote retailer may file its own returns, and may, but is not required to, utilize a CAS in filing its own returns and making payment of taxes. A remote retailer using a CAS shall maintain in its books and records the name of the owner or provider of the CAS it is using. A remote retailer shall also maintain this information in its books and records for any subsequent uses of a different CAS. This information shall be made available to the Department upon demand.
- d) If a remote retailer uses a CSP, the CSP is considered the agent of the remote retailer as provided in Section 131.160. All notices, assessments and other communications shall be sent by the Department to the CSP, not the remote retailer. (See Section 131.160 for additional information.)
- e) Remote retailers that make both marketplace sales and sales outside of a marketplace. Remote retailers often make sales both on a marketplace and outside of a marketplace (e.g., over their own website). If they make sales over a marketplace that meets the thresholds in Section 131.135 and have obtained certification from the marketplace facilitator that the marketplace facilitator is

legally responsible for payment of tax on marketplace sales as provided in Section 131.145, then all sales made over the marketplace are considered to be sales made by the marketplace facilitator, not sales by the remote retailer. The marketplace facilitator must include these sales on its return. A remote retailer shall not include sales made through a marketplace on the separate returns it files with the Department to report its own (non-marketplace) sales, and shall not include any of the sales made through a marketplace when computing any retailers' discount on their separately filed returns. Remote retailers that are "marketplace sellers" as defined in Section 131.105 are not required to file returns or make payment of tax for sales made to Illinois purchasers over a marketplace that meets the thresholds in Section 131.135, provided that the remote retailer has received certification from the marketplace facilitator that the marketplace facilitator is legally responsible for payment of tax on those sales as provided in Section 131.145. The sales are considered to be sales made by the marketplace facilitator.

- f) *A remote retailer is subject to audit on all its sales, other than those which are made on a marketplace and for which a marketplace facilitator remitted the applicable State and local retailers' occupation taxes, unless the marketplace facilitator seeks relief as a result of incorrect information provided to the marketplace facilitator by the remote retailer as provided in Section 131.145. [35 ILCS 120/2(c)] (See Section 131.160(c) and (d) for audit procedures for remote retailers using a CSP.)*
- g) *A remote retailer shall maintain books and records for its sales, including all sales made over a marketplace, in accordance with the requirements of Section 7 of ROTA.*
- h) *A remote retailer that files its own returns and makes payment of tax shall be entitled to the retailers' discount for all sales for which it timely files returns and makes payment of tax as required by Section 3 of ROTA. However, a remote retailer is not entitled to the retailers' discount for sales reported on returns filed by a CSP with whom it has a Tax Remittance Agreement. Similarly, a remote retailer is not entitled to the retailers' discount for sales made over a marketplace as provided in subsection (e).*
- i) *Remote retailers using a certified service provider or a certified automated system provider are relieved from liability to the State for having remitted the incorrect amount of use or occupation tax resulting from a certified service provider or certified automated system relying, at the time of the sale, on erroneous data provided by the Department in database files on tax rates, boundaries, or taxing jurisdictions, or erroneous data provided by the Department in database files concerning the taxability of products and services. [35 ILCS 185/5-30]*

- j) *Remote retailers using a certified automated system shall be liable for any tax resulting from errors caused by use of an updated or upgraded certified automated system prior to recertification of the updated or upgraded certified automated system by the Department as provided in Section 131.165. [35 ILCS 185/5-25(c)]*
- k) Unless otherwise provided to the contrary in this Part, a remote retailer is subject to all the rights and duties, and is subject to the same modes of procedure, as all other retailers under ROTA.
- l) *Nothing in this Section affects the obligation of any consumer to remit use tax for any taxable transaction for which a remote retailer does not collect and remit the appropriate tax. [35 ILCS 120/2(j)]*

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 131.130 Marketplace Facilitators – General Provisions**

#### **a) Activities of Marketplace Facilitators**

- 1) *Beginning January 1, 2021, a marketplace facilitator means a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates facilitates a retail sale by an unrelated third-party marketplace seller by:*
- A) *Listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under ROTA; and*
- B) *Either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services. Provision on a marketplace of functionality for connection to a payment mechanism meets the requirements of this subsection (a)(1)(B).*
- 2) *A person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not engage, directly or indirectly through one or more affiliated persons, in the activities described in subsection (a)(1)(B). [35 ILCS 120/1]*

- b) A marketplace facilitator must indicate to purchasers on its marketplace that the tangible personal property is being sold on behalf of an identified marketplace seller. If the marketplace seller is not identified to the purchaser on the marketplace, then for tax remittance purposes, the marketplace facilitator is considered the seller of the tangible personal property. A marketplace facilitator considered the seller of an item (either because the marketplace seller is not identified or because the marketplace facilitator is making a sale of its own) must register, file returns, and pay tax on its own sales separately from the return filed on behalf of marketplace sellers. Internet auction listing services ~~Auctioneers~~ that operate as marketplace facilitators must follow the provisions for disclosed or undisclosed principals at 86 Ill. Adm. Code 130.1915 in determining whether or not their marketplace sellers are identified. If none of the tangible personal property sold over a marketplace is identified to purchasers on the marketplace as tangible personal property sold on behalf of an identified marketplace seller, the requirements of subsection (a)(1)(A) are not met. (See EXAMPLE 4 at the end of this Section.)
- c) Beginning January 1, 2022, sales ~~Sales~~ of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made over a marketplace to purchasers in Illinois ~~purchasers~~ are ~~not~~ subject to the provisions of this Part. For sales made by a marketplace facilitator on behalf of marketplace sellers, taxes under this Part apply at the location to which the titled or registered item is shipped or delivered, or the location in Illinois where the purchaser takes possession of the titled or registered item. For a transaction in which an Illinois purchaser travels to an out-of-state location to take possession of an item that is required to be titled or registered with an agency of the State of Illinois, the provisions of this Part do not apply. In this case, only Use Tax is incurred. For sales made by marketplace facilitators themselves, see subsection (g). State and local uses taxes shall continue to be paid by purchasers as required by law as a condition of titling or registering these items.
- d) On and after January 1, 2021, a marketplace facilitator that meets either of the thresholds in Section 131.135(a) is considered a retailer engaged in the occupation of selling at retail in Illinois and is liable for all applicable State and local retailers' occupation taxes administered by the Department on all sales to Illinois purchasers made over the marketplace, including its own sales and sales made over the marketplace on behalf of marketplace sellers.
- e) Affiliates of a Marketplace Facilitator Are Not "Marketplace Sellers". As a result, a marketplace facilitator is not considered to be the retailer and is not liable for tax on sales made to Illinois purchasers by affiliates selling over its marketplace.

An affiliate must consider several factors in determining its tax liability. First, it must determine if it is a "remote retailer" under Section 131.110. (See also Illustration A.) If it is a remote retailer, it must calculate whether its sales meet either of the tax remittance thresholds in Section 131.115(a). If it is not a remote retailer, it must examine its selling activities to determine if it has any other type of tax liability. (See Section 131.155.) An affiliate of a marketplace facilitator that is a remote retailer and is liable for ROTA must register with the Department to file returns and make payment of the tax separately from any returns remitted to the Department by a marketplace facilitator. However, if a marketplace facilitator has obtained certification as a CSP or a CAS, it may assist affiliates in filing their returns and performing other tax functions as provided in Section 131.160 or 131.165.

- f) Except as provided in subsection 131.107(c)(1)(C), marketplaceMarketplace facilitators that meet either of the thresholds in Section 131.135(a) are deemed to be engaged in the business of selling on behalf of their marketplace sellers at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers' occupation taxes are incurred at the rate in effect at this location for all sales made on behalf of marketplace sellers over the marketplace. (See Section 131.155 and 35 ILCS 120/2-12(7).)
- g) Marketplace facilitators that meet either of the thresholds in Section 131.135(a) and that make their own sales over their marketplace (or are considered to be the seller because the marketplace seller is not identified as explained in subsection (b)) are subject to State and local retailers' occupation tax. ~~For sales that are fulfilled from inventory located in Illinois, the marketplace facilitator is deemed to be engaged in the business of selling at the location of the inventory. State and local retailers' occupation tax is incurred~~The marketplace facilitator incurs State and local retailers' occupation tax at the rate in effect at either the location of the inventory or the location in Illinois at which the selling activities otherwise occur. The location at which the State and local retailers' occupation tax is incurred must be determined by applying the provisions of 86 Ill. Adm. Code 270.115(c) and (d). For sales that are not fulfilled from inventory in Illinois ~~and~~ for which selling is not engaged in at any location in Illinois (see 86 Ill. Adm. Code 270.115), the marketplace facilitator is deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers' occupation tax is incurred at the rate in effect at this location for all such sales. (See Section 131.155.)

Note: For all the following examples, unless otherwise specified, marketplace sellers are identified to purchasers on the marketplace.

EXAMPLE 1: Carabibi, a social media network, provides a forum in which persons using the network can buy and sell used tangible personal property. Carabibi functions solely as an advertising platform bringing buyers and sellers together. Once the buyer and seller have contacted each other over the network, they must negotiate the sale and make payment arrangements themselves. While the forum provided by Carabibi constitutes a marketplace as defined in Section 131.101, Carabibi is not considered a marketplace facilitator because it does not engage in the activities described in subsection (a)(1)(B).

EXAMPLE 2: Paymate is a payment processing business appointed by merchants to handle payment transactions from various channels, such as credit cards and debit cards. Its sole activity with respect to marketplace sales is to handle financial transactions between two parties on the marketplace. Paymate is not a marketplace facilitator because it does not engage in the activities described in subsection (a)(1)(A).

EXAMPLE 3: CouponCrowd operates an online platform that sells coupons that can be redeemed by purchasers at various retail stores that have contracted with CouponCrowd to promote their businesses. CouponCrowd lists the coupons for sale, sells the coupons to purchasers, and processes payment for the purchase of the coupons. CouponCrowd is not a marketplace facilitator. The sale of a coupon is the sale of an intangible, not the sale of tangible personal property. Marketplace facilitators must engage in facilitating sales of tangible personal property.

EXAMPLE 4: Visualey This operates a specialized online marketplace that sells various brands of contact lenses to purchasers. Visualey This makes purchases for resale from various suppliers of the contact lenses offered for sale on its marketplace. Its marketplace does not indicate to purchasers using the marketplace that the sales are made on behalf of any identified marketplace sellers. In this example, Visualey This is not a marketplace facilitator. It is simply an online retailer making its own sales of contact lenses. Its tax liability will depend on its activities. (See Illustration A.)

EXAMPLE 5: Mandameal.com is an online and mobile food-ordering and delivery service that enters into over 200 transactions with Illinois purchasers. It contracts with a variety of ~~partner~~ restaurants by advertising meals available for purchase from ~~partner~~ restaurants; it also offers delivery service for the food orders. Customers place food orders using the Mandameal ~~application~~ or through its online website. Mandameal.com accepts payments from customers, completes the orders with the restaurants, and transmits payment on a regular basis to the restaurants. Mandameal.com engages in activities that make it a



marketplace facilitator. Mandameal.com is required to register with the Department and remit retailers' occupation tax, including applicable local retailers' occupation taxes administered by the Department, on sales made on its marketplace on behalf of ~~partner~~ restaurants. State and local retailers' occupation taxes are incurred at the rate in effect at the delivery location of the purchaser. For example, if the food order is delivered to a customer address, Mandameal.com incurs State and local retailers' occupation taxes in effect at the location where the order is delivered. If the order is picked up at the restaurant, however, Mandameal.com incurs State and local retailers' occupation taxes in effect at the restaurant location. For information on the imposition and applicability of the MPEA ROT and the Chicago Soft Drink Tax, see Section 131.107(c) of this Part.

EXAMPLE 6: CanineCorner.com is a marketplace that sells dog gear. Its gross receipts from sales to Illinois purchasers are over \$100,000. Ponchos for Pooches.com decides to sell its rain gear over this marketplace. Some of the inventory Ponchos for Pooches.com sells over the marketplace is fulfilled from its manufacturing plant in Portland, Oregon, while other sales are fulfilled from its warehouse in Kankakee, Illinois. CanineCorner.com incurs Retailers' Occupation Tax, including all applicable local retailers' occupation taxes, for all sales of rain gear made over the marketplace on behalf of Ponchos for Pooches.com. Tax on all sales, both those fulfilled from Portland, Oregon and from the Kankakee, Illinois warehouse, is incurred at the rate in effect at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser.

~~EXAMPLE 7: Antiquities, Inc. is an auction house located in Edwardsville, Illinois. It enters into agreements with individuals desiring to sell items at a weekly, in-person auction. A week before the auction, Antiquities, Inc. provides to the public an online listing of the items that will be sold. Once an item is sold, Antiquities, Inc. collects payment from the purchaser and pays the original owner of the item sold, minus an agreed-upon commission. Antiquities, Inc. is a marketplace facilitator operating a marketplace. Provided that it meets either of the thresholds in Section 131.135(a), it is required to remit State and local retailers' occupation taxes on all sales made through the marketplace. The tax rate that is applicable will depend upon whether the marketplace seller is identified (see 86 Ill. Adm. Code 130.1915 for further information). Sales made by an identified marketplace seller are taxed at the destination rate. (See Section 131.155(b).) If the marketplace seller is not identified, the marketplace facilitator/auctioneer will be considered the seller of the item and the tax rate that is applicable will depend upon the location at which the marketplace facilitator/auctioneer is engaged in the business of selling. (See subsection (g) and Section 131.155(c).)~~



EXAMPLE 78: Seconds for Less is an upscale resale shop in Evanston, Illinois. It buys and sells gently used clothing for children and adults. After inspecting the clothing offered by an individual for sale, it pays the individual, either in cash or with store credit, for the clothing it wishes to purchase. The clothing is then cleaned, pressed, and displayed for sale. In this example, Seconds for Less is not operating a marketplace and is not a marketplace facilitator because it owns the clothing it offers for sale.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 131.135 Marketplace Facilitators – Determination of Obligation to Remit Tax

- a) *Beginning January 1, 2021, a marketplace facilitator, as defined in Section 131.101, is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of ROTA if either of following thresholds is met:*
  - 1) *The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois made through the marketplace by the marketplace facilitator and by marketplace sellers are \$100,000 or more; or*
  - 2) *The marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.*
- b) *Marketplace facilitators that meet or exceed either of the thresholds in subsection (a) shall be liable for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales to Illinois purchasers.*
- c) *The marketplace facilitator shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets either of the thresholds in subsection (a) for the preceding 12-month period. If the marketplace facilitator meets either threshold for a 12-month period, he or she is considered a retailer engaged in the occupation of selling at retail in Illinois and is required to remit the retailers' occupation tax and all retailers' occupation taxes imposed by local taxing jurisdictions in Illinois, provided those local taxes are administered by the Department, and to file all applicable returns for one year. A marketplace facilitator shall begin collecting taxes for sales beginning on the first day of the quarter immediately following the end of the 12-month lookback period. Taxes so collected shall be remitted to the Department no later than the 20<sup>th</sup> day of the calendar month following the month in which they were collected or as otherwise provided in accordance with Section 3 of ROTA.*

- d) *At the end of that one-year period, the marketplace facilitator shall determine whether it met either of the thresholds in subsection (a) for the preceding 12-month period. If the marketplace facilitator met either threshold for the preceding 12-month period, he or she is considered a retailer engaged in the occupation of selling at retail in Illinois and is required to remit all applicable State and local retailers' occupation taxes and file returns for the subsequent year. [35 ILCS 120/2(c)]*
- e) If, at the end of the one-year collection period in subsection (d), the marketplace facilitator determines that its sales to Illinois purchasers did not meet either of the thresholds in subsection (a) during that year, it must discontinue remitting State and local retailers' occupation taxes.
- f) If a marketplace facilitator is no longer required to remit State and local retailers' occupation taxes, it must notify the Department and its marketplace sellers of this change. It must also provide the Department with the name, address and FEIN of all marketplace sellers making sales to Illinois purchasers during the previous one-year period. Notification to the Department and provision of the information required by this subsection (f) shall be made electronically as required by the Department. Until notification is made as required by this subsection (f), marketplace facilitators remain liable for tax under the Act and ROTA.
- g) *If a marketplace facilitator is no longer required to remit State and local retailers' occupation taxes and has discontinued tax remittance, it must redetermine, on a rolling quarterly basis, whether it is obligated to once more begin remitting State and local retailers' occupation taxes. For each quarter ending on the last day of March, June, September, and December, the marketplace facilitator must examine its sales for the immediately preceding 12-month period to determine whether it met either of the thresholds in subsection (a). If it met either of those thresholds during that 12-month lookback period, it must remit State and local retailers' occupation taxes for the following 12-month period. At the end of that 12-month period, it must examine its sales as provided in subsection (a) to determine if it must continue to remit tax. [35 ILCS 120/2]*

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 131.140 Factors Used by Marketplace Facilitators in Determining if Thresholds in Section 131.135 of this Part are Met**

- a) "Gross Receipts" and "Separate Transactions" Defined. The following definitions must be applied by a marketplace facilitator when determining if it meets either of the thresholds establishing tax remittance obligations:

1) "Gross Receipts" means all the consideration actually received for a sale. (See 86 Ill. Adm. Code 130.401 for additional information regarding gross receipts.) Subsection (b) describes what kinds of transactions must be included or excluded when determining whether the threshold based on gross receipts is met.

2) "Illinois Purchaser" means *a person in Illinois who, through a sale made over a marketplace, acquires the ownership of tangible personal property for a valuable consideration.* [35 ILCS 120/1]

3) "Entering into a Sale" occurs when a marketplace seller has taken action that binds it to a sale. This may occur, even though the tangible personal property that has been sold has not yet shipped to the purchaser.

EXAMPLE: On December 15, 2020, a marketplace seller takes actions binding it to a sale that is scheduled for shipment on January 15, 2021. This sale must be included in the calculation used to determine the marketplace facilitator's sales transactions for its initial lookback period under Section 131.135(b) (i.e., the lookback period of January 1, 2020 through December 31, 2020).

4) "Separate Transactions" means sales transactions that are documented on separate invoices, regardless of the manner in which the tangible personal property is delivered to the purchaser.

EXAMPLE 1: A purchaser orders 12 items of clothing from a marketplace seller. He receives an invoice confirming his order of 12 items. However, due to a back order, 3 of the clothing items are shipped separately from the other 9 items. Shipment of the 3 back-ordered items, even with a separate shipping invoice, is not considered a separate transaction because the original transaction was invoiced as one sale.

EXAMPLE 2: A purchaser places an order of home repair tools at 8:00 a.m. from a marketplace seller. She receives an invoice confirming her order at 8:15 a.m. At 2:00 p.m., the purchaser realizes she needs 5 other tools to complete the job, and orders these tools from the same marketplace seller. The marketplace seller confirms this order with a separate invoice. In this example, two different transactions have occurred. This is the case, even if the marketplace seller sends all the ordered tools to the purchaser in one package.

EXAMPLE 3: A parent places an order with a marketplace seller for care packages to be delivered to his or her son's dormitory at 8 scheduled

intervals during the school year. Each delivery is separately invoiced.  
These are counted as 8 separate transactions.

- b) Transactions that are included or excluded in determining if either of the tax remittance thresholds in Section 131.135(a) are met. A marketplace facilitator must apply the following provisions in determining whether a transaction should be included or excluded for purposes of determining if it meets either of the thresholds establishing tax remittance obligations:

- 1) Sales for resale must be excluded. (See 86 Ill. Adm. Code 130.201.)

EXAMPLE: Marketplace seller A makes a sale of seedlings to Company B over a marketplace. Company B provides a resale certificate indicating that 60% of the seedlings will be sold to customers at retail (a purchase for resale) and that it will use 40% of the seedlings in its landscaping business (a purchase for use). If the marketplace facilitator calculates its threshold using gross receipts, it should include only 40% of the gross receipts from this sale. If it calculates its threshold using transactions, however, the entire transaction with Company B must be included.

- 2) Before January 1, 2022, sales of tangible personal property to Illinois purchasers that is required to be titled or registered with an agency of this State, including motor vehicles, watercraft, aircraft, and trailers, must be excluded. Beginning January 1, 2022, sales of tangible personal property required to be titled or registered with an agency of this State, including motor vehicles, watercraft, aircraft, and trailers, that are made to purchasers in Illinois over a marketplace must be included when these items are shipped or delivered to purchasers in Illinois, or when possession is taken in Illinois by a purchaser in Illinois. Transactions in which an Illinois purchaser travels to an out-of-state location to take possession of an item that is required to be titled or registered with an agency of the State of Illinois must be excluded.

- 3) Sales which would otherwise be considered occasional sales under 86 Ill. Adm. Code 130.110 must be included. No sales made on a marketplace are considered to be occasional sales.

- 4) All sales of tangible personal property, other than those excluded by this subsection (b), even if they are exempt from tax, must be included for purposes of calculating the thresholds.

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 131.145 Marketplace Facilitators – Obligations – Procedures – Hold Harmless Provisions**

- a) Marketplace facilitators meeting either of the thresholds in Section 131.135(a) are required to register with the Department, file returns and remit tax for all sales made over the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers.
- b) *A marketplace facilitator shall certify to each marketplace seller:*
  - 1) *That the marketplace facilitator assumes the rights and duties of a retailer under ROTA and all applicable local retailers' occupation taxes administered by the Department with respect to sales made by the marketplace seller through the marketplace; and*
  - 2) *That the marketplace facilitator will remit taxes imposed by the retailers' occupation tax and all applicable local retailers' occupation taxes administered by the Department for sales made through the marketplace. [35 ILCS 120/2(d)]*
- c) The marketplace facilitator shall recertify under subsection (b) annually. All certificates required under this Section 131.145 shall include the following information:
  - 1) the marketplace seller's name, DBA (if applicable), address, and Illinois Account ID for sales tax or FEIN, or SSN if the marketplace seller does not have an Illinois Account ID or FEIN;
  - 2) the marketplace facilitator's name, address, and Illinois Account ID used for sales on behalf of its marketplace sellers;
  - 3) the effective date of the certification;
  - 4) a description of the taxes being collected and remitted by the marketplace facilitator;
  - 5) the marketplace facilitator's signature and date of signing; and
  - 6) any additional information that the Department may reasonably require.
- d)e) *A marketplace facilitator is liable for the remittance of all applicable State and local retailers' occupation taxes administered by the Department on sales made on behalf of marketplace sellers on the marketplace, as well as its own sales made*

over the marketplace, and is subject to audit on all such sales. A marketplace facilitator is not liable for tax on any sales made by a marketplace seller that take place outside of the marketplace and that are not a part of an agreement between a marketplace facilitator and a marketplace seller for the facilitation of sales by the marketplace seller over the marketplace. [35 ILCS 120/2(f)]

ed) Marketplace facilitators shall not be liable to State and local governments of Illinois for having charged and remitted an incorrect amount of State and local retailers' occupation tax if, at the time of the sale, the tax is computed based on erroneous data provided by the Department in database files on tax rates, boundaries, or taxing jurisdictions or on incorrect information provided to the marketplace facilitator by a marketplace seller. [35 ILCS 120/2(c)] (See also Section 131.150(b) and (c) for further information.)

fe) A marketplace facilitator shall maintain books and records for sales made over the marketplace to Illinois purchasers on behalf of marketplace sellers in accordance with the requirements of Section 7 of ROTA.

gf) Marketplace facilitators shall file returns and remit tax on sales made over the marketplace to Illinois purchasers on behalf of marketplace sellers separately from any sales made directly by the marketplace facilitator itself. [35 ILCS ~~120/2(c)~~~~120/2(C)~~] Marketplace facilitators must separately register with the Department to file and pay tax on their own sales; tax on those sales shall be reported and paid on a return separate from the return filed on behalf of marketplace sellers.

hg) Marketplace facilitators are not authorized to file returns and remit tax on sales made by affiliates over the marketplace to Illinois purchasers unless the marketplace facilitator is acting as a certified CSP or CAS for the affiliate.

ih) A marketplace facilitator shall be entitled to any credits, deductions, or adjustments to the sales price otherwise provided to the marketplace seller, in addition to any such adjustments provided directly to the marketplace facilitator, such as discounts, coupons, and rebates. [35 ILCS 120/2(c)] For provisions regarding the taxation of rebates, discounts, and coupons, see 86 Ill. Adm. Code 130.2125.

ji) A marketplace facilitator shall be entitled to the retailers' discount as provided in Section 3 of ROTA on all marketplace sales made to Illinois purchasers on behalf of marketplace sellers. [35 ILCS 120/2(c)]

kj) A marketplace is a location held out to the public as being habitually engaged in the selling of tangible personal property. As such, no sales made on a

marketplace are considered to be occasional sales (see 86 Ill. Adm. Code 130.110).

~~lk~~) *The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace facilitator and the marketplace seller on the same transaction. [35 ILCS 120/2(h)]*

~~ml~~) *Nothing in this Part affects the obligation of any consumer to remit use tax for any taxable transaction for which a marketplace facilitator does not collect and remit the appropriate tax. [35 ILCS 120/2(j)]*

~~nm~~) Unless otherwise provided to the contrary in this Part, a marketplace facilitator is subject to all the rights and duties, and is subject to the same modes of procedure, as all other retailers under ROTA with respect to sales made over the marketplace.

~~o~~) A marketplace facilitator must maintain books and records containing the name, address and FEIN of all marketplace sellers making sales through its marketplace and provide these records to the Department upon request.

~~p~~) A marketplace facilitator may make an exempt sale on behalf of a marketplace seller that possesses an active exemption identification number (E number) issued by the Department, if the sale made by the marketplace seller would qualify as one of the three limited types of tax-free selling authorized under 86 Ill. Adm. Code 130.2005(a)(1)-(4). In order to document the exempt sale, the marketplace facilitator is required to obtain the active E number issued to the marketplace seller, along with a certification from the marketplace seller explaining the specific basis for exemption under 86 Ill. Adm. Code 130.2005(a)(1)-(4).

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 131.150 Marketplace Sellers – Obligations – Procedures – Hold Harmless Provisions**

a) Except as otherwise provided in this Section, a marketplace seller is not liable for State and local retailers' occupation taxes for sales of tangible personal property sold to Illinois purchasers through a marketplace, provided that, prior to its sales, it has obtained a certification from the marketplace facilitator as established in Section 131.145(b).

b) A marketplace seller shall furnish to the marketplace facilitator information that is necessary for the marketplace facilitator to correctly remit tax on each sale made on its behalf over the marketplace. The information may include a certification that an item being sold is taxable, not taxable, exempt from taxation, or taxable at



a specified rate (for example, at either the general merchandise rate or the preferential low rate of tax).

- c) A marketplace facilitator that relies in good faith on the information provided in subsection (b) by a marketplace seller shall be relieved of liability for the tax on that transaction. In this case, a marketplace seller is subject to audit on that transaction and shall be liable for any resulting State and local retailers' occupation taxes due.
- d) Books and Records. *A marketplace seller shall maintain books and records for all sales made through a marketplace in accordance with Section 7 of ROTA.* [35 ILCS 120/2(e)]
- e) A marketplace seller that makes sales to Illinois purchasers outside of a marketplace must examine its selling activities to determine its tax liabilities (i.e., determine if it is a remote retailer; [an out-of-state seller](#)~~retailer~~ with a physical presence required to collect and remit [Use Tax](#)~~use tax~~; or an Illinois retailer required to remit State and local retailers' occupation tax). (See Section 131.115 and Illustration A.) It must separately register with the Department to report and pay taxes incurred on these sales.
- f) A marketplace seller that incurs tax liability on sales made outside of a marketplace shall not include sales made through a marketplace on the separate returns filed with the Department, and shall not include any of its sales made through a marketplace when computing any retailers' discount on its separately filed returns.
- g) *If for any reason, the Department is prohibited from enforcing the marketplace facilitator's duty to remit taxes, the duty to remit those taxes remains with the marketplace seller, provided it is otherwise required to remit taxes under ROTA or the Use Tax Act.* [35 ILCS 120/2(i)]
- h) *The Department is prohibited from collecting State and local retailers' occupation taxes from both the marketplace seller and the marketplace facilitator on the same transaction.* [35 ILCS 120/2(h)]

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 131.155 Tax Sourcing Provisions

- a) Under [Section 2 of the Retailers' Occupation Tax Act and Sections 2 and 2d of the Use Tax Act](#)~~P.A. 101-0031 and P.A. 101-604~~, the type of tax liability incurred by a retailer and the manner in which that liability is sourced depends upon the

manner in which a retailer conducts its selling activities, as well as the type of nexus (or lack thereof) that a retailer has with the State. Retailers may incur State and local retailers' occupation taxes based either upon the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing") or upon the location in Illinois at which the selling activities occur ("origin sourcing"; see 86 Ill. Adm. Code 270.115). Some retailers, in contrast, may incur only a Use Tax collection obligation. Still other retailers may incur no tax obligations at all. Multichannel retailers may incur a combination of ~~any of~~ these liabilities. Because of these distinctions, it is critical that retailers evaluate their selling activities carefully to determine their proper tax liability.

- b) Except as provided in subsection 131.107(c)(1)(C), marketplaceMarketplace facilitators required to remit State and local retailers' occupation tax on sales to Illinois purchasers for sales made on behalf of marketplace sellers. On and after January 1, 2021, marketplace facilitators meeting either of the thresholds in Section 131.135(a)(1) or (a)(2) are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser for sales made over the marketplace on behalf of a marketplace seller. (See 35 ILCS 120/2-12(7).)
- c) Marketplace facilitators required to remit State and local retailers' occupation tax for their own sales to Illinois purchasers, or sales for which they are considered the seller because the marketplace seller is not identified (see Section 131.130(b)). On and after January 1, 2021, marketplace facilitators meeting either of the thresholds in Section 131.135(a)(1) or (a)(2) may incur either destination sourcing or origin sourcing on a sale to an Illinois purchaser. A marketplace facilitator is deemed to be engaged in the business of selling at either the Illinois location at which the inventory is located or at which the selling activities otherwise occur ("origin sourcing"). The location at which State and local retailers' occupation tax is incurred must be determined by applying the provisions of 86 Ill. Adm. Code 270.115(c) and (d).~~When a marketplace facilitator makes a sale to an Illinois purchaser that is fulfilled from inventory located in Illinois (or for which selling activities otherwise occur at a location in Illinois; see 86 Ill. Adm. Code 270.115), it is deemed to be engaged in the business of selling at the Illinois location at which the inventory is located or at which the selling activities otherwise occur ("origin sourcing").~~ When a marketplace facilitator makes a sale to an Illinois purchaser that is fulfilled from inventory located outside Illinois and for which selling activities otherwise occur at a location outside Illinois (see 86 Ill. Adm. Code 270.115), it is deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing").

EXAMPLE 1: World of Spices operates a marketplace selling various spices on behalf of marketplace sellers. It meets the thresholds for tax remittance in Section 131.135(a)(1). Purchaser A places an order for Ceylon Cinnamon, Asafetida and Ajwain from Marketplace seller A. She requests delivery to her residence in Chicago, Cook County. World of Spices incurs State and local retailers' occupation taxes in effect at the location in Chicago to which the spices are shipped or delivered. Local occupation taxes would include the Regional Transportation Authority Retailers' Occupation Tax at the 1.25% rate, but would not include any additional local occupation taxes. (See subsection (f).)

EXAMPLE 2: A purchaser that resides in Chatham, Illinois, orders an espresso machine from a marketplace seller over a marketplace that meets the tax remittance threshold in Section 131.135(a)(2). The purchaser chooses an option to pick up the item at a Springfield, Illinois brick and mortar store that has partnered with the marketplace seller. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the Springfield store location.

EXAMPLE 3: Home Appliances is a brick and mortar store in Bloomington, Illinois that sells appliances. It recently became a marketplace seller on a large multinational marketplace that meets the threshold for tax remittance in Section 131.135(a). Home Appliances fills all orders made over the marketplace from its ~~store~~ warehouse in Bloomington. Purchaser A orders a grilled cheese sandwich toaster over the marketplace and chooses delivery to his residence in Kankakee, Illinois. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the Kankakee location to which the grilled cheese sandwich maker was shipped or delivered.

~~EXAMPLE 4: Conkle's Auctioneers operates an auction house in Carbondale, Illinois. Its location in Carbondale is where it is engaged in the occupation of selling tangible personal property applying the provisions of 86 Ill. Adm. Code 270.115. All the items sold are located in Carbondale at the time of sale. Conkle's engages in activities qualifying it as a marketplace, and meets the tax remittance threshold in Section 131.135(a)(2). It holds a weekly, in-person auction. Some, but not all, marketplace sellers are identified. Most purchasers take possession of their purchases in Carbondale at the time of sale. However, some instead request that Conkle's ship their items to a different location. When purchasers take possession of their purchases at the auction house, State and local retailers' occupation taxes are always incurred at the tax rate in effect at the location of the auction house in Carbondale. The result is the same for both identified and unidentified marketplace sellers. For sales by identified marketplace sellers, tax is incurred at the rate in effect at the auction house in Carbondale because that is where the purchaser takes possession of the item (the destination rate). For sales by unidentified marketplace sellers, Conkle's is considered the seller. It will incur~~

~~tax liability at the rate in effect at the auction house in Carbondale because, in this example, that is the location at which Conkle's is engaged in the occupation of selling tangible personal property in Illinois (and is also the location of inventory). (See subsection (c).) For items that are delivered to Illinois purchasers and that are sold on behalf of identified marketplace sellers, Conkle's incurs State and local retailers' occupation taxes in effect at the location to which the purchased items are shipped or delivered (destination rate). For items delivered to Illinois purchasers and that are sold on behalf of unidentified marketplace sellers, Conkle's is considered the seller. Tax for these sales will be incurred at the rate in effect at the location of the auction house in Carbondale because this is the location in this example where Conkle's is engaged in the business of selling tangible personal property in Illinois (and is also the location of inventory). (See subsection (c).) If Conkle's ships the items sold to purchasers in California and meets all the other requirements of 86 Ill. Adm. Code 130.605, no State and local retailers' occupation taxes are incurred, because this is an exempt sale into interstate commerce.~~

EXAMPLE 45: Marketplace facilitator A operates a marketplace. It meets the tax remittance threshold of Section 131.135(a)(1). It makes sales of its own tangible personal property, as well as tangible personal property sold on behalf of marketplace sellers. It offers purchasers that pay it a yearly membership fee free and speedy delivery on selected items. Customer A in Champaign, Illinois, shops for a coffee grinder on the marketplace and compares similar products sold by Marketplace facilitator A and Marketplace seller B. He decides to purchase the product sold by Marketplace facilitator A because he has paid membership fees and receives faster delivery. Marketplace facilitator A does not engage in any selling activities in Illinois and fulfills the sale from a warehouse located in Missouri. The marketplace facilitator incurs State and local retailers' occupation taxes in effect at the location in Champaign where the coffee grinder is shipped or delivered.

EXAMPLE 56: The facts for this example are the same as for EXAMPLE 45. However, the marketplace facilitator fulfills the order from a warehouse located in Kankakee, Illinois. In this example, Marketplace facilitator A incurs State and local retailers' occupation taxes in effect at the location of the warehouse in Kankakee from which the order was fulfilled.

- d) Remote retailers required to remit State and local retailers' occupation tax on sales made to Illinois purchasers. *On and after January 1, 2021, remote retailers meeting either of the tax remittance thresholds in Section 131.115(a) of this Part are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser.* [35 ILCS 120/2-12(6)]

EXAMPLE 1: Vichy Vines is a vintner in the Columbia River Valley that holds an Illinois Liquor Control Commission Winery Shipper's License and sells wine to Illinois purchasers over its website. It has no physical presence in Illinois and meets the tax remittance threshold of Section 131.115(a)(1). Consequently, for purposes of tax imposed under ROTA, it is deemed to be engaged in the business of selling at the Illinois location to which its wine is shipped or delivered or at which possession is taken by the purchaser. Vichy Vines sells a case of its best grenache to an Illinois purchaser and delivers it to an address in Chicago, Cook County. Vichy Vines incurs all State, municipal, county, and special district retailers' occupation taxes in effect at the location to which the wine is shipped or delivered.

EXAMPLE 2: Katy is an artist in Los Angeles that sells her jewelry through the Etc.com. marketplace, as well as through her own website. Etc.com is a marketplace facilitator that meets the tax remittance threshold of Section 131.135(a)(2). Tax on all sales Katy makes over Etc.com must be reported and remitted by Etc.com. as required in subsection (b). Katy must next determine if she has tax liability for sales made through her own website. In making this determination, Katy should not include either the gross receipts from, or transactions made to, Illinois purchasers over Etc.com. Katy has no physical presence in Illinois, so she is considered a remote retailer. If she determines that she meets either of the tax remittance thresholds of Section 131.115(a), she is considered to be a retailer engaged in the business of selling at the Illinois location to which her jewelry is shipped or delivered or at which possession is taken by purchaser. She incurs State and local retailers' occupation taxes in effect at the different Illinois locations to which her jewelry is shipped or delivered or at which possession is taken by the purchaser. Alternatively, if Katy determines that she does not meet either of the thresholds in Section 131.115(a), she is not required to register and remit taxes (however, she is required to monitor her selling activities to determine, on a quarterly basis, if she meets either of the tax remittance thresholds). If she does not meet either of the thresholds, she-She may, however, voluntarily register to collect and remit Use Tax~~use tax~~ as a courtesy to her Illinois purchasers, since those purchasers will still incur a Use Tax~~use tax~~ liability that they must otherwise self-assess and remit directly to the Department. (See 86 Ill. Adm. Code 150.805 for additional information.)

- e) Out-of-State Sellers~~Retailers~~ with a Physical Presence in Illinois. Out-of-State sellers~~retailers~~ with a physical presence in Illinois are not remote retailers. However, they are "retailers maintaining a place of business in Illinois" under Section 2 of the Use Tax Act. As a result, they generally incur only a Use Tax~~use tax~~ collection obligation (6.25%) on sales made to Illinois purchasers from locations outside Illinois. However, if~~if~~ sales are made to Illinois purchasers from

locations in Illinois, State and local retailers' occupation tax is incurred at the rate in effect where the selling activities occursales are made ("origin sourcing"); (see 86 Ill. Adm. Code 270.115(c) and (d) to determine the location at which State and local retailers' occupation taxes are incurred). This selling frequently occurs when sales made to Illinois purchasers are filled from inventory located in Illinois.

EXAMPLE 1: Company A is a sushi restaurant supply company headquartered in San Francisco. It routinely sends representatives to Illinois to market supplies to sushi restaurants. All of its sales to Illinois purchasers are filled from inventory in Oakland, California. The representatives make no sales from locations in Illinois. Company A is not a remote retailer because it has a physical presence in Illinois due the activities of its sales representatives. It is required to register to collect and remit Use Tax (6.25%) on its sales to Illinois purchasers.

EXAMPLE 2: DanubeDeliveries.com is an affiliate of a large multinational marketplace facilitator. The facilitator meets either of the tax remittance thresholds of Section 131.135(a) and so is required to remit State and local retailers' occupation tax for sales made on behalf of marketplace sellers on the marketplace. DanubeDeliveries.com sells 35% of its products over the marketplace, and these sales are fulfilled from a warehouse of the marketplace facilitator located in Monee, Illinois. The remaining 65% of its sales to Illinois purchasers are made outside Illinois. Because DanubeDeliveries.com is an affiliate of the marketplace facilitator, it is not considered a marketplace seller. As a result, the marketplace facilitator is not authorized to remit tax on sales made over the marketplace on behalf of DanubeDeliveries.com. as it does for all its marketplace sellers. It may, however, collect the tax and send it to DanubeDeliveries.com to remit to the Department, or, if the marketplace facilitator has obtained certification as a CSP or CAS, it may assist DanubeDeliveries.com in filing its returns and performing other tax functions, as provided in Section 131.160 or 131.165. DanubeDeliveries.com must next determine its tax obligations. In making this determination, it must first consider whether it is a remote retailer. It is not considered a remote retailer because it has a physical presence in Illinois due to inventory in Monee, Illinois, from which Illinois purchases are fulfilled. As a result, it incurs two different types of tax liability on its sales. It incurs State and local retailers' occupation tax at the rate in effect in Monee, Illinois for sales made to Illinois purchasers that are fulfilled from inventory in Monee ("origin sourcing"). For all sales made to Illinois purchasers from outside Illinois, DanubeDeliveries.com is required to collect and remit Illinois Use Tax (6.25%). DanubeDeliveries.com must register to report and remit tax on all its sales, including those made over the marketplace.



- f) Retailers that are required to remit State and local retailers' occupation taxes on their sales to Illinois purchasers generally incur no local retailers' occupation taxes on sales of tangible personal property subject to the preferential low 1% rate, since most local taxing jurisdictions lack authority to impose tax on those items. (See 86 Ill. Adm. Code 270.101.) However, certain units of local government (i.e., transportation districts) are authorized to impose tax on these items. (See 86 Ill. Adm. Code 320.101. For detailed information, see the Illinois Tax Rate Finder on the Department's website.)

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 131.160 Certified Service Providers – Obligations – Procedures – Hold Harmless Provisions**

- a) A certified service provider (CSP) is an agent of a remote retailer that performs all of a remote retailer's sales tax functions, as outlined in the contract between the Department and the CSP. These functions include the preparation and filing of all required tax returns or amended returns, payment of tax, and resolution of any notices or audits of the remote retailer. These functions do not include remittance of ~~Use Tax~~use tax by the remote retailer on its own purchases.
- b) The software of a CSP interfaces with a remote retailer's accounting system to:
- 1) Identify which products are taxable;
  - 2) Apply the appropriate tax rate; and
  - 3) Maintain a record of the transaction
- c) A CSP will provide services necessary to:
- 1) Set up and integrate the CSP's software with the remote retailer's system;
  - 2) As agent for the remote retailer, prepare and file all required returns or amended returns;
  - 3) As agent for the remote retailer, remit tax to the Department;
  - 4) As agent for the remote retailer, resolve any notices or audits by the Department; and
  - 5) Provide for the protection and confidentiality of tax information consistent with the requirements of Section 11 of ROTA.



- d) The Department shall send all notices, assessments and other communications regarding the remote retailer's tax functions to the CSP, as agent for the remote retailer. The Department shall not, except as otherwise provided in this subsection, send these communications to the remote retailer. A remote retailer must contact the CSP with whom it has contracted in order to receive copies of the notices, assessments and other communications. In the event that an assessment has been issued to a CSP, and the CSP demonstrates to the satisfaction of the Department that its failure to correctly remit tax on a retail sale resulted from its good faith reliance on incorrect or insufficient information provided by a remote retailer, the Department shall withdraw the assessment of the CSP and issue the assessment to the remote retailer, who shall be liable for any resulting tax, penalties and interest due.
- e) A CSP, or the remote retailer that has contracted with the CSP, shall be subject to all the same conditions, restrictions, limitations, penalties and modes of procedure as other retailers under ROTA in cases in which assessments have been issued as provided in subsection (d).
- f) If, for any reason, a CSP ceases to remit tax under the provisions of this Part, it must notify the Department and the remote retailers for whom it provides services of this change. Notification to the Department shall be made electronically as required by the Department and shall include proof that notification has been made to its remote retailers. Until notification is made as required by this subsection (f), CSPs remain liable for tax under the Act and ROTA.
- gf) Before acting as a CSP for a remote retailer, a CSP must be certified by the Department. Certification requires that a CSP applicant meet all established evaluation criteria. In addition, the systems of a CSP must have been tested and approved by the Department for properly determining the taxability of items to be sold, the correct rate of tax to apply to a transaction, and the appropriate jurisdictions to which the tax must be remitted.
- hg) A CSP that has been certified by the Department shall enter into a contractual relationship with the Department. The contract shall, at a minimum:
- 1) *Provide that the CSP shall be held liable for State and local retailers' occupation taxes administered by the Department if the CSP fails to correctly remit the tax after having been provided with the tax and information by a remote retailer to correctly remit those taxes. However, if the CSP demonstrates to the satisfaction of the Department that its failure to correctly remit tax on a retail sale resulted from the CSP's good faith reliance on incorrect or insufficient information provided by the*

*remote retailer, the CSP shall be relieved of liability for the tax on that retail sale, and the remote retailer shall be liable for any resulting tax, penalties and interest due;*

- 2) *Provide for the responsibilities of the CSP and the remote retailers that contract with the CSP with respect to record keeping and auditing consistent with the requirements imposed under ROTA;*
- 3) *Provide for the protection and confidentiality of tax information consistent with the requirements of Section 11 of ROTA;*
- 4) *Provide that the CSP is entitled to compensation equal to 1.75% of the tax dollars remitted to the State by a CSP on a timely basis on a return that has been properly and timely filed by the CSP on behalf of a remote retailer, and that a remote retailer using a CSP may not claim the vendor's discount allowed under Section 3 of ROTA;*
- 5) Provide that a CSP shall enter into a Tax Remittance Agreement with a remote retailer prior to acting as a CSP for that remote retailer, under which the CSP agrees to remit all State and local retailers' occupation taxes administered by the Department for sales made by the remote retailer. The agreement shall be retained by the CSP in its books and records and shall be provided to the Department upon demand;
- 6) Provide that a CSP shall obtain and provide to the Department, upon request, a Power of Attorney, in the form and manner required by the Department, for each remote retailer with whom it has a Tax Remittance Agreement;
- 7) Provide that a CSP shall obtain and maintain updated information for each remote retailer with which it has a Tax Remittance Agreement. This information shall include the name, post office address, email address, phone number, and FEIN or SSN of the remote retailer. It shall also include the name and address of the person or persons identified by the remote retailer who are responsible for filing returns and payment of taxes due under ROTA. This information shall be made available to the Department upon request.
- 8) *Provide that a CSP shall file a separate return for each remote retailer with which it has a tax remittance agreement and make payment by electronic means as required by the Department. [35 ILCS 185/5-25]*

- [ih\)](#) A CSP that has been certified must electronically register with the Department. Registration shall include an acceptance of responsibility signed by the person or persons of the CSP who will be responsible for filing returns and payment of the taxes due under ROTA. As part of its registration, a CSP must also certify that it has obtained from each remote retailer for whom it acts as agent an acceptance of responsibility signed by the person or persons of the remote retailer who are responsible for filing returns and making payment of taxes under ROTA, that it will keep the information current, and that it will provide the information to the Department upon request.
- [ji\)](#) Once certified, a CSP must notify the Department that it has entered into a Tax Remittance Agreement with a remote retailer within 30 days after execution of the Tax Remittance Agreement. A CSP cannot file returns or pay tax on behalf of a remote retailer until it has notified the Department that it has entered into a Tax Remittance Agreement with a remote retailer. Returns and payment of tax made on behalf of a remote retailer may then be filed by the CSP only for periods beginning with the current reporting period of the remote retailer (monthly, quarterly or annual). The CSP is not authorized to file returns, including amended returns, for any periods prior to the commencement of the current reporting period. Only one CSP is authorized to file a return for a remote retailer for any given reporting period (e.g., if the remote retailer terminates its contract with a CSP and enters into a contract with a new CSP before the end of its current reporting period, only one of those CSPs can file the return for the remote retailer). A CSP shall notify the Department of the termination of a Tax Remittance Agreement within 30 days after the termination of the Tax Remittance Agreement. Notification shall be made electronically as required by the Department.
- [kj\)](#) *A CSP shall file a separate return for each remote retailer with whom it has a Tax Remittance Agreement. [35 ILCS 185/5-25]*
- [lk\)](#) *A CSP shall be entitled to compensation equal to 1.75% of the tax that is remitted with a return that is timely and properly filed on behalf of a remote retailer. [35 ILCS 185/5-25], [as well as any supplemental compensation allowed pursuant to the Act.](#)*
- [ml\)](#) *A CSP shall not be held liable for any State and local retailers' occupation taxes administered by the Department if the remote retailer does not provide the CSP with the tax and information to correctly remit all taxes due. A CSP that demonstrates [to the satisfaction of the Department](#) that it relied in good faith on incorrect or insufficient information provided by the remote retailer shall be relieved of liability for the tax on that transaction. [35 ILCS 185/5-25] Incorrect or insufficient information includes, but is not limited to, incorrect information*

that an item being sold is taxable or not taxable, exempt from tax, or taxed at a specified rate (e.g., the rate applicable to either general merchandise or the low preferential 1% rate). Incorrect or insufficient information also includes failure of the remote retailer to report sales or to obtain properly executed documentation of an exemption as required by ROTA and 86 Ill. Adm. Code 130.

*nm) A CSP is relieved of liability to the Department for having remitted the incorrect amount of tax resulting from reliance, at the time of the sale, on erroneous data provided by the Department in database files on tax rates, boundaries or taxing jurisdictions, or erroneous data provided by the Department concerning the taxability of products and services (Illinois Sales Tax Matrix). [35 ILCS 185/5-30]*

*on) When a CSP contemplates a material revision to its systems, it must notify the Department at least 60 days before any such revision. Upon receipt of that notification, the Department shall discuss the proposed revision with the CSP. If the Department determines that the revision is sufficiently material, the CSP must be recertified. The Department shall test the proposed revision to assess whether the revised system of the CSP can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. The Department shall recertify revised systems that meet these requirements. A CSP shall be liable for any tax resulting from errors caused by use of a revised system prior to recertification by the Department. [35 ILCS 185/5-25]*

*pe) The Department shall provide each CSP with a test deck two times per year, in December and June, as a check to ensure that the CSP's system can properly determine the taxability of items to be sold, the correct tax rate to apply to a transaction, and the appropriate jurisdictions to which the tax shall be remitted. (See 35 ILCS 185/5-25.)*

*gp) A CSP must be recertified every three years. At least 1 year prior to expiration of a CSP's certification status, the Department shall contact the CSP to initiate the recertification process. Once recertified, the Department's contract with the CSP shall be amended or renewed.*

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## **Section 131.170 Department Responsibilities**

a) Provision of Databases. No later than July 1, 2020, the Department will:

- 1) Provide and maintain an electronic database of defined product categories that identifies the taxability of each category. The Department will meet this requirement by the provision and maintenance of the Illinois Sales Tax Matrix on the Department's website. The Department will provide persons subject to this Part with as much advance notice as practicable of changes in the Sales Tax Matrix. Failure of the Department to provide notice or failure of a person to receive notice shall not relieve the person of its obligation to remit tax as required by law. However, persons may petition the Department for abatement of penalties on reasonable cause shown;
- 2) Provide and maintain an electronic database of all retailers' occupation tax rates for the jurisdictions in Illinois that levy a retailers' occupation tax administered by the Department. The Department will meet this requirement by the provision and maintenance of the Tax Rate Finder Tax Rate Database on the Department's website. Local retailers' occupation taxes for jurisdictions in Illinois are generally subject to change twice a year, effective July 1 and January 1, and prior to these dates, any such changes are reflected on the Department's Tax Rate Finder Tax Rate Database. The Department will, as much as practicable, provide a CSP or CAS with notice of the changes by publishing updated tax rates on the Tax Rate Finder Tax Rate Database on the Department's website at least one month prior to the effective date of any tax rate changes. However, failure of a person to receive notice provided by the Department prior to the effective date of any tax rate change as set forth in this subsection (a)(2) shall not relieve the person of its obligation to remit tax as required by law. Persons subject to this Part may petition the Department for abatement of penalties on reasonable cause shown; and
- 3) Provide and maintain an electronic database that assigns delivery addresses in Illinois to the applicable taxing jurisdictions. The Department will provide a CSP or CAS with notice of any changes to this database [for implementation](#) on January 1 and July 1 of each year. Until that notification, the CSP or CAS may rely upon the information in the database to correctly remit taxes as required in this Part. (See 35 ILCS 185/5-20.)
- 4) [\*Remote retailers using CSPs or CASs and their CSPs are relieved from liability to the State for having remitted the incorrect amount of use or occupation tax resulting from reliance, at the time of the sale, on erroneous data provided by the State in its database files on tax rates, boundaries or taxing jurisdictions. 35 ILCS 185/5-30\(b\). The Department will not make reallocations of tax previously erroneously remitted to local\*](#)

taxing jurisdictions based upon errors in the tax rate or address databases provided for in subsections (a)(2) and (a)(3) of this Section. Errors discovered in these databases must be reported to the Department either by April 1, with the update becoming effective the next following July 1; or by October 1, with the update becoming effective the next following January 1. The Department, however, will make reallocations of tax previously erroneously remitted upon the filing of amended returns, and only to the extent of the amount of taxes which have been erroneously remitted.

b) Certification of CSP and CAS. No later than July 1, 2020, the Department will:

- 1) Establish uniform minimum standards that companies wishing to be designated as certified service providers in Illinois must meet;
- 2) Establish uniform minimum standards that certified automated systems must meet; and
- 3) Establish a certification process to review the systems of companies wishing to be designated as certified service providers in Illinois or of companies wishing to provide certified automated systems to remote retailers.

c) The Department will enter into a contractual relationship with each company that qualifies as a CSP. (See Section 131.160.) As a condition of its registration, a remote retailer using a CAS must agree to comply with the requirements set forth in Section 131.165(d).

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 131.175 Local Taxing Jurisdiction Responsibilities**

- a) *Beginning February 1, 2022 and on or before February 1 of each year thereafter, the Department will make available to each local taxing jurisdiction the taxing jurisdiction's boundaries, determined by the Department, for its verification. Jurisdictions shall verify these taxing jurisdiction boundaries and notify the Department of any changes, additions, or deletions by April 1 of each year in the form and manner required by the Department. The Department will use its best judgment and information to confirm the information provided by the taxing jurisdictions and update its database. The Department will administer and enforce the changes on the first day of the next following July. [35 ILCS 185/5-30(c)]. Taxes previously erroneously allocated to a local taxing jurisdiction based upon incorrect jurisdiction boundary information shall not be reallocated. The*

Department, however, will make reallocations of tax previously erroneously remitted upon the filing of amended returns, and only to the extent of the amount of taxes which have been erroneously remitted. Otherwise, taxes will be correctly allocated prospectively on July 1, based upon updated boundary information for which the Department has been properly notified by April 1 as provided in this subsection (a).

b) *The clerk of any municipality or county from which territory has been annexed or disconnected shall notify the Department of that annexation or disconnection in the form and manner required by the Department. Required documentation shall include a certified copy of the plat of annexation or, in the case of disconnection, the ordinance, final judgment, or resolution of disconnection together with an accurate depiction of the territory disconnected. Notification shall be provided to the Department either:*

1) *On or before the first day of April, whereupon the Department will confirm the information provided by the municipality or county and update its database and proceed to administer and enforce the confirmed changes on the first day of July next following proper notification; or*

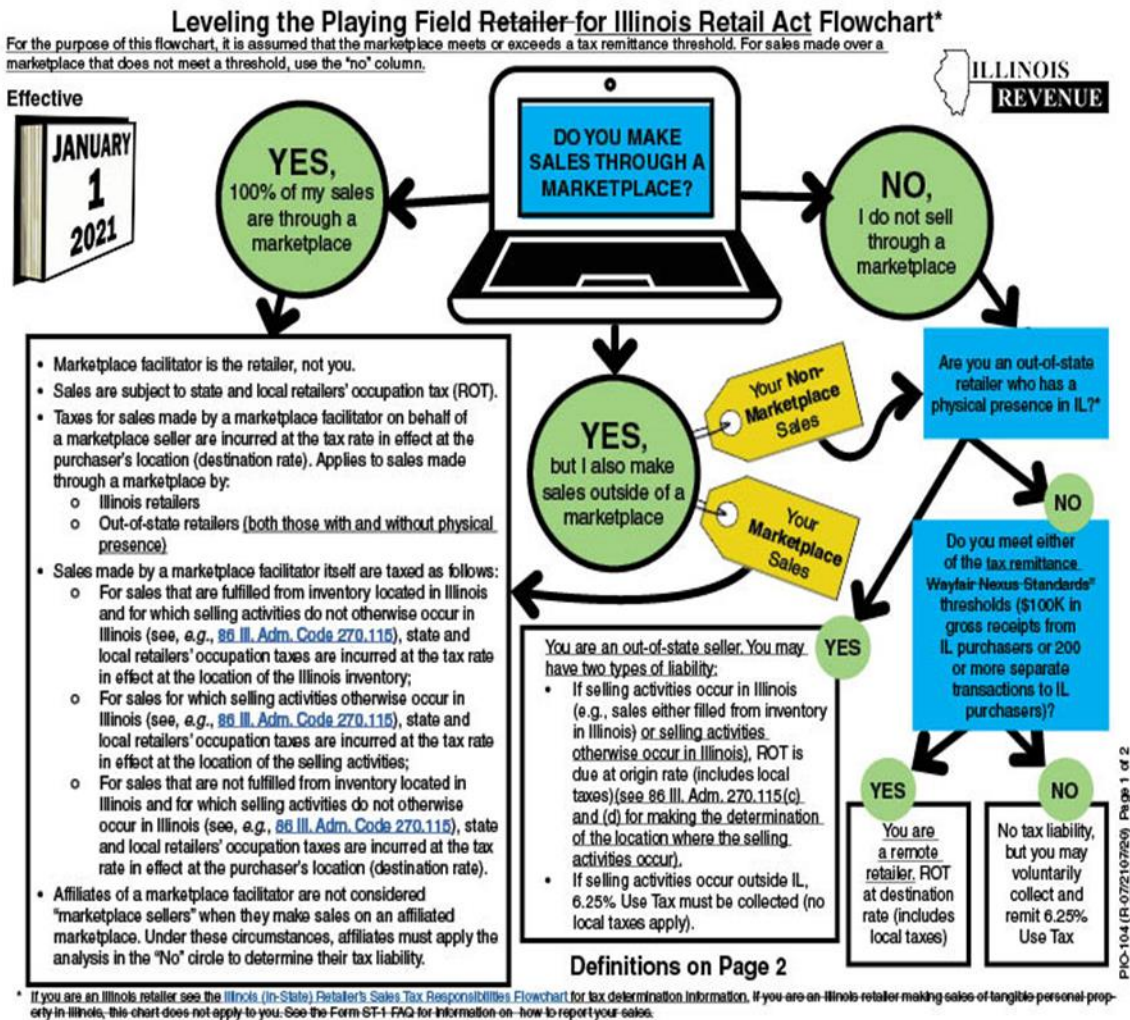
2) *On or before the first day of October, whereupon the Department will confirm the information provided by the municipality or county and update its database and proceed to administer and enforce the confirmed changes on the first day of January next following proper notification. [35 ILCS 185/5-30(d)]*

3) Taxes previously erroneously allocated to a local taxing jurisdiction based upon incorrect jurisdiction boundary information under this subsection (b) shall not be reallocated. The Department, however, will make reallocations of tax previously erroneously remitted upon the filing of amended returns, and only to the extent of the amount of taxes which have been erroneously remitted. Otherwise, taxes will be correctly allocated prospectively on either January 1 or July 1, based upon updated annexation or disconnection information for which the Department has been properly notified as provided in this subsection (b).

(Source: Amended at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



Section 131.ILLUSTRATION A: Leveling the Playing Field Retailer Flowchart



\*If you are an Illinois retailer engaged in the occupation of making sales of tangible personal property in Illinois and you make sales over a marketplace, see the "YES" box for the treatment of those sales. If you [are an Illinois retailer and](#) do not make any sales over a marketplace, the provisions of this chart do not apply to you and you should handle your liability as you did prior to January 1, 2021.

## Definitions

**"Marketplace"** means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. [35 ILCS 120/1]

**"Marketplace facilitator"** means a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates facilitates a retail sale by an unrelated third-party marketplace seller by:

1. Listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under this Retailers' Occupation Tax Act; and
2. Either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

A person who provides advertising services, including listing products for sale, is not considered a marketplace facilitator, so long as the advertising service platform or forum does not engage, directly or indirectly through one or more affiliated persons, in the activities described in paragraph (2) of this definition of "marketplace facilitator". [35 ILCS 120/1]

Marketplace facilitators meeting either of the tax remittance thresholds in the Wayfair Nexus Standards are required to register with IDOR, file returns, and remit tax for all sales made through the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. A marketplace facilitator shall certify to each marketplace seller that the marketplace facilitator will assume the rights and duties of a retailer under the ROT Act and all applicable local retailers' occupation taxes administered by IDOR with respect to sales made by the marketplace seller through the marketplace. [86 Ill. Adm. Code 131.145]

**"Marketplace seller"** means a person that makes sales through a marketplace operated by an unrelated third party marketplace facilitator. A person that is an affiliate of a marketplace facilitator is not a marketplace seller. [35 ILCS 120/1]

**"Affiliate"** means a person that, with respect to another person: (i) has a direct or indirect ownership interest of more than 5 percent in the other person; or (ii) is related to the other person because a third person, or a group of third persons who are affiliated with each other as herein defined, holds a direct or indirect ownership interest of more than 5% in the related person. [86 Ill. Adm. Code 131.105]

**"ROT" or "Retailers' Occupation Tax"** means the tax levied under the Retailers' Occupation Tax Act and all applicable local retailers' occupation taxes collected by the Illinois Department of Revenue in conjunction with the state retailers' occupation tax. [35 ILCS 185/5-10]

**"Destination rate"** means the total state and local retailers' occupation tax rate calculated for a sale using the rate in effect at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. [35 ILCS 120/2-12]

**"Origin rate"** means the total state and local retailers' occupation tax rate calculated for a sale using the rate in effect at the Illinois location at which the sales are determined to occur. [e.g. 86 Ill. Adm. Code 270.115]

**"Out-of-state seller"** means a seller located outside Illinois that has a physical presence, as defined below.

**"Physical presence"** in Illinois means having or maintaining within Illinois, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within IL under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in Illinois. [35 ILCS 105/2 (1)]

For other forms of physical presence, see 35 ILCS 105/2 (1.1) and (1.2).

**"Remote retailer"** means a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a "remote retailer". [35 ILCS 120/1]

**"Tax remittance thresholds" "Wayfair Nexus Standards"** means the standards established by the Supreme Court case, *South Dakota v. Wayfair, Inc.*, No. 17-494 (U.S. June 21, 2018) and used to determine tax collection obligations for remote retailers that meet specific selling thresholds but have no physical presence in the state. Illinois P.A. 100-587 enacted nexus standards that are virtually identical to those upheld in Wayfair decision. Beginning January 1, 2021, remote retailers that meet or exceed either of the following thresholds shall be liable for all applicable state and locally imposed retailers' occupation taxes administered by IDOR on all retail sales to Illinois purchasers. [P.A. 101-0031 and 101-0604] The thresholds are:

1. The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
2. The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

**For further information and examples,  
see 86 Ill. Adm. Code 131.**